

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

OWEN ELECTRIC COOPERATIVE, INC. )  
 )  
\_\_\_\_\_) ) CASE NO.  
 ) 2011-00160  
ALLEGED FAILURE TO COMPLY WITH KRS )  
278.020 )

ORDER

By Order dated June 21, 2011, the Commission directed Owen Electric Cooperative, Inc. ("Owen") to appear at a hearing on August 2, 2011 to show cause why it should not be subject to penalties under KRS 278.990(1) for alleged violation of the statute governing Certificates of Public Convenience and Necessity ("CPCN"), KRS 278.020, and for failing to comply with the Commission's August 5, 2009 Order in Case No. 2009-00010.<sup>1</sup>

KRS 278.020(1) provides, in relevant part, as follows:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course

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<sup>1</sup> Case No. 2009-00010, Application of Owen Electric Cooperative, Inc. for an Order Pursuant to KRS 278.300 and 807 KAR 5:001, Section 11, and Related Sections, Authorizing the Cooperative to Obtain a Loan Under the RUS/CoBank Co-Lending Program not to Exceed \$28,083,000 at any One Time from Rural Utilities Service and CoBank (Ky. PSC Aug. 5, 2009).

of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

In the Commission's August 5, 2009 Order in Case No. 2009-00010, the Commission placed all jurisdictional electric cooperatives on notice that they are required to obtain a CPCN for all construction work plans prior to beginning construction on the facilities contained in those plans.

Owen drafted its 2010–2011 Construction Work Plan (“CWP”) during the fall of 2009 and received approval of the CWP from the Rural Utilities Service (“RUS”) in November 2009. Owen did not file its CPCN application with the Commission until December 2010. However, Owen had begun construction on a number of the projects described in its 2010–2011 CWP prior to obtaining a CPCN.

On July 7, 2011, Owen filed a response to the Order initiating this show cause proceeding. Owen acknowledged that “it did not file for the CPCN before any work began on the Construction Work Plan.” Owen, however, maintained that its “lack of filing was not willful in nature nor was it an intentional disregard of KRS 278.020 or the Commission’s Order of August 5, 2009” in Case No. 2009-00010.

Also included in Owen’s response was a request for an informal conference with Commission Staff to discuss the issues related to this matter. An informal conference was subsequently held at the Commission’s office on August 1, 2011, and the hearing scheduled on August 2, 2011 was cancelled. Discussions during the informal conference between Owen and Commission Staff resulted in the filing of a Stipulation of Facts and Settlement Agreement (“Stipulation”) on October 17, 2011.

The Stipulation, attached hereto as Appendix A and incorporated herein by reference, sets forth Owen's acknowledgment that a CPCN should have been obtained, but was not, prior to beginning construction of any of the projects contained in its 2010–2011 CWP. The Stipulation also discusses the remedial actions to be developed and implemented by Owen to ensure that construction does not begin on work plan projects until the Commission issues a CPCN under KRS 278.020(1). Finally, Owen has agreed to pay a civil penalty of \$3,000 in full satisfaction of the alleged violation of KRS 278.020 and our August 5, 2009 Order in Case No. 2009-00010.

Determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Stipulation and Owen's willingness to develop and implement internal protocols to ensure that future construction work plans are filed in a timely manner, as well as Owen's cooperation to achieve a resolution of this proceeding. Owen's newly developed internal protocols were filed in the record of this case and they are set forth in Appendix B, attached hereto and incorporated herein by reference. Those protocols include two separate procedures related to ensuring that work plan projects are not started prior to the Commission's issuance of a CPCN: (1) a 23-step checklist for Owen's development of work plans and obtaining a CPCN before construction begins; and (2) a written policy assigning Owen's Senior Vice President of Corporate Services and its Vice President of Engineering responsibility for filing CPCN applications with the Commission.

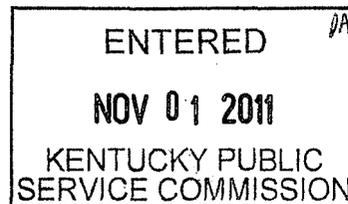
Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate

any regulatory principle. The Commission further finds that the Stipulation is a product of arms-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED that:

1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. Owen shall pay the amount of \$3,000 within 30 days of the date of this Order by cashier's check or money order made payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, KY 40602.
3. Upon receipt of the payment of \$3,000 by Owen, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission



ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2011-00160 DATED NOV 01 2011

## STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated June 21, 2011, the Commission initiated this proceeding to determine whether Owen Electric Cooperative, Inc. ("Owen") should be subject to the penalties prescribed in KRS 278.990 for allegedly violating KRS 278.020 and the Commission's August 5, 2009 Order in Case No. 2009-00010<sup>1</sup> by beginning construction on some of the projects contained in its 2010–2011 Construction Work Plan ("CWP") without first obtaining a Certificate of Public Convenience and Necessity ("CPCN").

On July 7, 2011, Owen filed a response to the Commission's June 21, 2011 Order. Owen acknowledged that "it did not file for the CPCN before any work began on the Construction Work Plan." Owen, however, maintained that its "lack of filing was not willful in nature nor was it an intentional disregard of KRS 278.020 or the Commission's Order of August 5, 2009."

Also included in Owen's response was a request for an informal conference with Commission Staff to discuss the issues related to this matter. An informal conference was subsequently held at the Commission's offices on August 1, 2011. Discussions during the informal conference between Owen and Commission Staff resulted in the following Stipulation of Facts and Settlement Agreement ("Stipulation"), which is submitted for the Commission's consideration in rendering its decision:

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<sup>1</sup> Application of Owen Electric Cooperative, Inc. for an Order Pursuant to KRS 278.300 and 807 KAR 5:001, Section 11, and Related Sections, Authorizing the Cooperative to Obtain a Loan Under the RUS/CoBank Co-Lending Program not to Exceed \$28,083,000 at any One Time from Rural Utilities Service and CoBank (Ky. PSC, Aug. 5, 2009).

1. Owen acknowledges that a CPCN should have been obtained, but was not, before beginning construction of any of the projects contained in its 2010–2011 CWP.

2. Owen agrees to develop internal procedures to ensure that future construction work plans will be filed with the Commission in a timely manner. These procedures will include the establishment of a detailed check list for preparing and seeking approval of construction work plans, written procedures detailing division responsibilities to be included in Owen's employee manual, the creation of job descriptions for those personnel involved in the construction work plan process, and the restructuring of the responsibility for regulatory affairs under the finance department.

3. Owen agrees to pay the amount of \$3,000 in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's June 21, 2011 Order as to whether Owen should be assessed penalties under KRS 278.990 for willful violations of KRS 278.020 and the Commission's Order of August 5, 2009 in Case No. 2009-00010. The Commission's acceptance of this Stipulation shall not be construed as a finding of a willful violation of any Commission statute or order.

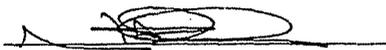
4. In the event that the Commission does not accept this Stipulation in its entirety, Owen and Commission Staff reserve their rights to withdraw therefrom and require that a hearing be held on any and all issues involved herein, and that none of the provisions contained herein shall be binding upon the parties thereto, used as an admission by Owen of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the June 21, 2011 Order, or otherwise used as an admission by either party.

5. This Stipulation is for use only in Commission Case No. 2011-00160, and neither party hereto shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceeding by the Commission to enforce the terms of this Stipulation or to conduct a further investigation of Owen's service, and Owen shall not be precluded or estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.

6. Owen and Commission Staff agree that the foregoing Stipulation is reasonable for the purpose of resolving all issues in Commission Case No. 2011-00160, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, Owen agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

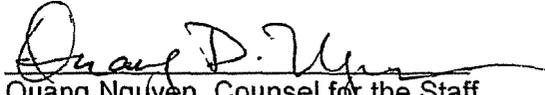
IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures this 14<sup>th</sup> day of October, 2011.

**Owen Electric Cooperative, Inc.**

By 

Title President & CEO

**Staff of the Kentucky Public Service Commission**

By   
Quang Nguyen, Counsel for the Staff

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2011-00160 DATED **NOV 01 2011**

## OWEN ELECTRIC COOPERATIVE

### Owen Electric Cooperative - Construction Work Plan (PROCEDURAL CHECKLIST)

Step	Activity	Target Completion	Date Completed	Cert. Initials
1	Prepare Historical and Projected Cost Data	August		
2	Gather County and other agency Comp. Plans	August		
3	Meet with CEO and Staff to Discuss Plan Outline	August		
4	Meet with RUS GFR to Discuss Plan Details/Guidelines	August		
5	Submit Letter of Intent for CPCN to PSC	August		
6	Discuss specific system issues w/Operations	August		
7	Develop Engineering Models per Current Load Forecast	Late August		
8	Run Engineering Analysis Model	Early September		
9	Examine Engineering Analysis Results	Mid September		
10	Develop Plan Recommendations	Mid October		
11	Prepare CWP application for CPCN to the KY PSC	Mid October		
12	Review Final Plan with RUS GFR	Last of October		
13	CEO & ENG Final CWP Budget Consideration	Last of October		
14	Submit CWP and apply for CPCN with the KY PSC	Last of October		
15	Prepare Owen Board of Directors CWP Exec Summary	Mid November		
16	OEC Board - Budget Committee Review of CWP	Mid November		
17	Owen Electric Board Presentation/Approval Resolution	Mid November		
18	Submit Plan to RUS Washington, D.C.(Inc. BER)	Mid November		
18	Follow up with RUS Washington on BER et.al.	December		
20	Await Final RUS Washington Comments on BER et.al.	End January/Beginning Feb		
21	Submit Final RUS approval and any necessary amendments to PSC	End January/Beginning Feb		
22	Await Order on CPCN from PSC	End February		
Final	Begin Construction upon receipt of PSC Order	Beginning March		

RUS: Rural Utilities Service

GFR: General Field Representative for RUS (presently based in Lexington, Kentucky)

BER: RUS-Required "Borrowers Environmental Reports" that certifies CWP will have min impact

CPCN: Certificate of Public Convenience and Necessity

PSC: Public Service Commission

## REGULATORY COMPLIANCE COORDINATION

**Guideline:** MIS-20  
**Review Date:** 08-11  
**Responsibility:** Outlined Below

The purpose of this guideline is to assign responsibility for coordination of various regulatory filings to Owen Electric Cooperative senior management personnel as outlined below.

Pres./CEO Executive Secretary will route all mail or communications to appropriate departments. A copy of all Kentucky Public Service commission correspondence is routed to the Sr VP, Corporate Services. If an unusual situation arises, Sr. V.P. of Corporate Services will coordinate with necessary individual Dept. V.P.'s or others as needed.

Sr VP, Corporate Services Provides oversight of all regulatory filings in Coordination with other departments as outlined below:

- Responsible for the preparation and submission to the KY PSC of:
  - All Rate & Financing Applications and associated filings
  - Fuel Adjustment Clause filings
  - Environmental Surcharge filings
  - Monthly financial reports
  - Annual PSC report
  - Reports relating to safety concerns or accidents
- Responsible for the coordination of the following filings to the KY PSC:
  - Certificate of Public Convenience and Necessity (CPCN) for the Construction Work Plan (CWP)
  - Other CPCNs, as needed
  - All Miscellaneous Orders and Administrative Case responses
- Responsible for the preparation and submission to Rural Utility Service (RUS) of:
  - Annual Form 7
  - Form 219s (Inventory of Work Orders)
  - Special Equipment Purchases
  - Form 595, as needed
  - Annual Financial Statement audit
- Responsible for the preparation and submission of the Form 990 to the Internal Revenue Service:

Responsible for the preparation and submission to the Kentucky Department of Revenue of:

All Sales and Use Tax Returns  
Annual Property Tax Returns

Preparation and submission of all applicable payroll tax and employment related returns to various federal, state, and local regulatory agencies

Preparation and submission of Form 5500 to ERISA

Preparation of Form EIA-281 to the Department of Energy

Preparation and submission of all financial reports (monthly, quarterly, and annual) relating to ARA grants to KY DEDI and to CRN for reporting to the Department of Energy

Responsible for the preparation and submission of all reports to the KY Department of Transportation relating to the registration of company vehicle, road use, and excise taxes

Responsible for filing of annual report with KY Secretary of State

Sr VP Cust. Service and Marketing

Responsible for the preparation and submission of all tariff filings  
Maintains report of termination for non-payment  
Maintains consumer compliant file

VP Engineering

Prepares Construction Work Plan and files for CPCN with PSC in coordination with Sr VP, Corporate Service

VP of Operations

Preparation and filing of responses to customer complaints to KY PSC  
Preparation and submission of meter related reports to the KY PSC:

Quarterly report  
Voltage complaint reports  
Line voltage surveys  
Meter test reports  
Standards tested  
Meter testing equipment – monthly calibration report  
Bi-annual testing of company owned Volt-Meters  
Meter Vendor standard test records

Preparation and submission of Line Inspection reports  
Preparation and submission of Reliability reports

VP of Technology

Preparation and submission of all programmatic reports (monthly, quarterly, and annual) relating to ARA grants to KY DEDI and to CRN for reporting to the Department of Energy

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